COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Appeal From Order No. 103 of 2001

Smt. Parwati Devi and others

Vs.

State of U.P. and others.

With

Appeal From Order No.852 of 2001

Kishan Lal

Vs.

Smt. Parwati Devi and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Initials of Judge

Date: 21-12-2006

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 103 Of 2001
(Old Defective FAFO No. 662 of 1999)

1. Smt. Parwati Devi widow of late Pushkar Singh.
2. Sri Tapan Singh, minor 9 years, under guardianship of mother Smt. Parwati Devi, son of late Pushkar Singh,
3. Km. Neena minor 7 years, under guardianship of her mother Smt. Parwati Devi Daughter of late Pushkar Singh, All residents of Krishnapur, Tallital, Nainital.

… Claimant/Appellants

Versus

1. State of U.P. through Collector Nainital.
2. Bhumi Sanrakshan Adhikari (Soil Conservation Officer), Nainital.
3. Smt. Bhawani Devi (deceased) Wife of late Gopal Singh Kapkoti (name deleted).

.... Respondents.

Sri M.C. Pande, Advocate, learned counsel for the appellants.
Learned Standing Counsel for the State-respondents.

With

Appeal From Order No. 852 Of 2001
(Old FAFO No. 754 of 1999)

Kishan Lal Son of Shri Dhani Ram, Jeep Driver, Office of Deputy Director Agriculture, Garhwal Division Pauri, District Pauri, at present in Pariyojana Adhikari (B.S.A.) Almora. (O.P.)

… Appellant.

Versus

1. Smt. Parwati Devi Widow of Late Pushkar Singh.
2. Shri Tapan Singh, aged 9 years son of Late Pushkar Singh,
3. Km. Neema, aged 7 years, daughter of late Pushkar Singh, All are residents of Krishnapur, Tallital, District Nainital. (Claimants)
4. State of U.P. through Collector Nainital.
5. Bhumi Sanrakshan Adhikari (Soil Conservation Officer), Nainital.
6. Smt. Bhawani Devi (deceased) aged about 70 years Wife of late Gopal Singh Kapkoti (name deleted) (O.P.)

… Respondents.

Sri Naresh Pant, Advocate, learned counsel for the appellant.
Sri M.C. Pande, Advocate, learned counsel for the claimant-respondents.
Learned Standing Counsel for the State-respondents no. 4& 5.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Dated December 21, 2006.
(Per Hon'ble B.S. Verma, J.)

Since both these appeals under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act*)** arise out of the common judgment and award dated 29-7-1999 passed by the Motor Accident Claims Tribunal/III Additional District Judge, Nainital (***for short the Tribunal)*** in Motor Accident Claim Petition No. 356 of 1995 Smt. Parwati Devi and others Vs. State of U.P. and others, whereby the compensation of Rs.50,000/- has been awarded in favour of the claimants and respondent Smt. Bhawani Devi. The compensation was ordered to be payable by the driver Kishan Lal. Aggrieved by the said award, the claimants have filed A.O. No. 103 of 2001 for enhancement of compensation, while the driver of the vehicle has preferred A.O. No. 852 of 2001. The controversy to be determined in these two appeals are similar, therefore, for the sake of convenience, both the appeals are being decided together by this common judgment.

During the pendency of these appeal, Smt. Bhawani Devi, the mother of the deceased Pushkar Singh has died and her legal representatives, i.e. claimants, are already on record, therefore, her name was ordered to be deleted from the array of respondent in both the appeal.

Facts giving rise to these appeals, in brief, are that Pushkar Singh son of late Sri Gopal Singh (deceased) aged 35 years and earning salary of Rs. 2,705/- per month from government service was on government duty on 8.8.1995. He was employed as Peon in the Soil Conservation Department. On the fateful day, the Soil Conservation Officer was going to Lucknow and he was accompanied by the deceased upto Railway Station Lalkuan. The Jeep No. URN-8797 was being driven by its driver Sri Kishan Lal. After the officer concerned boarded the train, the deceased was

returning by the said Jeep, which was being driven rashly and negligently by its driver with the result the jeep met with an accident at Kuliyalpur, Gali No. 8 Nawabi Road, Haldwani on 8.8.1995 at about 10-15 p.m. Pushkar Singh suffered grievous injuries and was taken to S.S.Jeena Base Hospital Haldwani and then the injured was referred to Bareilly for treatment. At Bareilly, the injured was advised to be taken to Delhi. The deceased thereafter succumbed to his injuries and his Post Mortem was conducted at Base Hospital, Haldwani. The claimants are the widow and minor son and daughter of the deceased. The claimants filed claim petition for compensation of Rs. Six lacs and also claimed interim compensation on the principle of no-fault liability amounting to Rs. 50,000/-.

The opposite nos. 1 and 2, the State and the Soil Conservation Officer filed their joint written statement (paper no. 16-Kha). In the Written Statement, both the opposite parries have admitted the name, parentage of the deceased. The age of deceased was stated to be 40 years and it was admitted that the deceased was a class IV employee under the Soil Conservation Officer-O.P.No.2. It was asserted that the accident took place at 11-00 p.m. It was also asserted that the driver of the Jeep was directed to park the jeep in the office of the Soil Conservation Officer Haldwani, but the deceased and the driver in violation of the directions took the jeep towards Nawabi Road Haldwani and dashed the jeep against the KMOU bus with the result the deceased suffered serious injuries and later-on died. In paragraph no. 23, it has been asserted that the deceased as well as the driver of the jeep violated the directions of the respondent no.2 and took the Jeep towards Nawabi road out of their own will and dashed it with K.M.O.U. bus with the result the Jeep suffered heavy damages and deceased Pushkar Singh ultimately lost his life. It has also been asserted that departmental inquiry was held against the driver of the Jeep and he was removed from service by the respondent no.2. Since respondent no.2 was not the appointing authority of the driver, the Additional Director of Agriculture Pauri set aside the order of termination and fresh

inquiry was ordered. The driver was held guilty of the charges levelled against him and he was punished with other punishment by the Appointing Authority. It was also asserted that the Jeep driver was a necessary party, therefore, the petition is bad for non-joinder of driver of the Jeep.

The driver of the Jeep has been arrayed as respondent-O.P. No.4 in the claim petition, who filed his written statement 36-Kha and contested the claim petition. In the additional pleas, it has been stated that on the fateful day the driver was on his official duty with departmental Jeep No. URN-8797 and after the Soil Conservation Officer left for Lucknow by train at Lalkuan, the deceased and he both returned to Haldwani side. He also asserted that at Haldwani, he had to deliver one letter addressed to Nandan Singh Bisht, Technical Assistant, who used to reside in Mohalla Mukhani and then to park the Jeep at Nainital Head Office as per directions of his boss. Unfortunately, when the driver was performing his duty, the said accident occurred. He also stated that earlier also he used to park the vehicle after leaving his Officer at Lalkuan railway station. Regarding the accident, he asserted that the accident occurred due to rains and as there was no wipers fitted in the screen of vehicle, hence due to mechanical fault, the accident happened. He also asserted that he had undergone department inquiry and after having exonerated from the charges, he has been re-instated in the department. In the last, he has pleaded that since the answering opposite party was performing his official duty, therefore, compensation, if any, is liable to be paid by the Department/State.

The learned Tribunal framed following Issues:-

1. Whether the Jeep No. URN 8797 was being driven rashly and negligently by its driver at the time of the alleged accident?

2. Whether at the time of alleged accident the driver was driving the government jeep in the course of his employment? If not, then its effect?

3. Whether the driver of the jeep is a necessary party in the claim petition?

4. Whether the petition is bad due to misjoinder of O.P.No.2 i.e. Soil Conservation Officer, Nainital?

5. What amount of compensation, if any, the claimants or anyone of them is entitled to receive from which O.Ps.?

The claimants besides filing documentary evidence, Panchayatnama and post-mortem report of the deceased, examined Smt. Parwati Devi, widow of the deceased, as P.W.1 The Opposite Party Nos. 1 and 2 examined Sri Mahendra Singh, the then Soil Conservation Officer, as D.W.1, while the driver Kishan Lal has examined himself as D.W.2.

After hearing both the parties and perusing the evidence, the learned Tribunal has held that the driver Kishan Lal has already been arrayed as party to the proceeding and the then Soil Conservation Officer- O.P.No.2 was also a proper party, therefore, the Issue Nos. 3 and 4 were decided accordingly. The learned tribunal relying upon the sole testimony of D.W.1 the then Soil Conservation Officer has held that the driver was driving the vehicle in violation of the direction of his Officer and in drunken state and he was rash and negligent in driving the jeep, therefore, Issue No.1 was decided in affirmative. The learned Tribunal has further held that the vehicle was not being driven in the course of his employment by the driver of the jeep, therefore, it was held that the employer/owner of the government jeep cannot be held liable for a mischievous act of the driver. It may be mentioned here that this finding of the learned Tribunal is based on account of departmental inquiry having been conducted against the driver. The learned Tribunal has however not recorded any categorical finding on the point of quantum of compensation holding that both driver and the

deceased had contributed to the negligence. The learned Tribunal has ultimately awarded compensation of Rs. 50,000/- towards no fault liability and fastened the liability upon the driver of the vehicle and decreed the claim petition for a sum of Rs.50,000/- vide order dated 29-7-1999. Aggrieved, the claimants as well as the driver of the ill-fated jeep have come up in appeal.

The claimants challenged the impugned judgment and order on the ground that it was established that the deceased had died on account of negligent act of the driver in the course of his employment, therefore, the owner of the vehicle/State cannot escape its vicarious liability to pay compensation. It was also contended that the driver was admittedly deputed in his official duty on the fateful day and the accident had been caused in the course of his employment. It was also contended that the learned Tribunal had wrongly held that the deceased had contributed to the negligence. The quantum of compensation was not at all worked out by the Tribunal taking into consideration the income and age of the deceased. It was also contended that no amount has been allowed for loss of consortium and love and affection etc.

The driver of the vehicle has challenged the impugned judgment and award on the ground that under the provisions of Section 140 of the Act, no liability can be fastened upon the driver of the vehicle, rather it is the owner who is responsible to pay the compensation on the principle of no fault. It was also contended that the finding of the Tribunal is not tenable because the appellant-driver was using the vehicle in the course of his employment and that the finding of the tribunal that the driver was in drunken state is not tenable in the eye of law. The findings of the tribunal have been questioned on the point that the accident occurred due to mechanical fault and the findings are not based on evidence on record.

We have heard learned counsel for both the parties and have perused the entire material on record.

The admitted facts of the case are that the deceased Pushkar Singh was employed as peon/orderly and he was attached to the Soil Conservation Officer Nainital (for short the Officer) and he was a government employee. The illfated government Jeep No. URN-8797 was provided to the Officer and Kishan Lal was the driver of the said jeep. It is also not disputed that the Officer had left for Lalkuan by the departmental jeep and boarded the train for Lucknow on 8-8-1995. The Officer was also accompanied by his orderly-the deceased as well as jeep driver. It is not disputed that the said jeep met with an accident in the night on the same day with the result the orderly-peon suffered grievous injuries and he was admitted to Base Hospital Haldwani and then referred to Bareilly and he succumbed to his injuries. It is also not disputed that the F.I.R. of the accident was lodged by the driver of the vehicle on the next day, i.e. on 9-8-1995. It is not disputed that departmental injury was held against the driver and ultimately, he was awarded punishment by the competent authority. Admittedly, the learned Tribunal has not given any finding on the amount of compensation holding that the deceased also contributed to the negligence and the award was given to the extent of Rs. 50,000/- under Section 140 of the Act on the principle of no-fault liability. It may be noted that the driver Kishan Lal had filed copy of the inquiry report (36-Kha) and has proved it by his oral testimony as D.W.2 It may also be noted that D.W. 1 Mahendra Singh, retired Soil Conservation Officer Jaulapi is not an eye witness of the occurrence because the Officer had left for Lucknow by the evening train on the fateful day and the accident took place in the night of 8-8-95 itself at Haldwani. From the testimony of D.W.1, the Officer concerned, this much stands established that the deceased peon and the driver had accompanied him upto Railway Station Lalkuan. Therefore, so far as the plying of the government jeep from the headquarter Nainital to rAilway Station Lalkuan is concerned, this fact is fully admitted to the witness of the State, D.W. 1. This much is also established that the accident had taken place in the city of Haldwani near Nawabi Road.

In the above back ground, it has to be determined in the present appeal whether the findings recorded by the learned Tribunal on all the five issues are based on proper appraisal of the evidence or not. For better appreciation of the evidence, the case of driver is taken first. At the outset, it may be noted that the driver has contended half-heartedly that the accident took place due to mechanical defect in the vehicle. The only ground taken by the driver in his written statement is that at the time of accident, it was raining and there were no wipers in the front screen of the Jeep. This plea of the driver does not find any corroboration from any other evidence.

It is evident that initially the driver of the jeep was not arrayed as party to the proceedings. The driver was impleaded as a party on the plea taken by the State. It is pertinent to mention that a departmental action was taken against the driver and he was charge-sheeted by the department. The driver himself has filed the copy of the departmental enquiry report (paper no. 36-Kha) and has proved the same by his oral evidence as indicated above. The genuineness of this document has not been challenged from the side of other parties. The learned Tribunal has not at all referred to this important document filed on behalf of the driver-appellant. As pointed out earlier, the learned Tribunal on the strength of on oath statement of the Officer concerned as D.W.1 has concluded that the driver of the jeep was rash and negligent and he was under the state of intoxication at the relevant time. The Officer concerned was not an independent witness, rather he was fully interested to favour his department. D.W.1 was not even an eye itness of the accident. It appears that he had already taken punitive action against the driver by suspending him, therefore, he came forward to state the same facts before the Tribunal. In this case, only it has to be examined whether or not the driver of the government jeep was rash and negligent in driving the government Jeep and that too in the course of his employment. A reference to the Departmental Enquiry Report

is relevant because the driver has filed the copy in support of his own case. The first charge levelled against the driver in the departmental enquiry was that the driver had been asked to park the Jeep in the office of Soil Conservation Officer Haldwani, but in violation of the directions the driver had plied the vehicle at his own free will and dashed it against a K.M.O.U. bus in drunken state. In the departmental inquiry itself that part of the charge was not proved that the driver had acted in flagrant disregard of the orders of his Officer, but is was proved that he was not careful in plying the jeep in the night on hill route at odd hours of night. This finding against the driver of the vehicle goes to the very root of the matter that there was no such order in writing by the Officer directing the driver to do an act in particular manner. Moreover, D.W.1 has been cross-examined on the relevant point that the office of the Soil Conservation Officer is situated by the side of Mukhani canal in Kalawati colony. In the way there is Kulyal pur, in the vicinity of which accident took place. This much is fully established from the admitted facts of the case, that the driver Kishan Lal was driving the vehicle in the course of his employment. The place of the accident, the presence of the deceased orderly inside the vehicle and the journey performed by the Officer concerned by the government Jeep upto Railway Station Lalkuan on the very day and his departure to Lucknow by the evening train are sufficient to hold that the driver was taking the vehicle in the course of his employment. Even from a remote corner, it has not come on record that the driver or the deceased had taken the vehicle from the headquarter Nainital and even from the Railway Station Lalkuan to Haldwani without any authority. Therefore, so far as the accident having occurred in the course of employment of driver-appellant Kishan Lal is concerned, it stands fully proved from the pleadings of the parties, oral testimony of D.W.1 Mahendra Singh and the copy of the inquiry report, paper no.36-Kha.

It is also pertinent to mention that the D.W.1 Mahendra Singh, who was the Officer concerned at the relevant time and has given statement against the driver of the government jeep

before the Tribunal had not at all made any effort to lodge an F.I.R. with the police stating the true facts against the driver Kishan Lal, particularly when he was of the view that his jeep-driver had caused an accident due to his own negligence and the jeep had collided with a parked K.M.O.U. bus so that police could have investigated the matter on proper line of investigation. But the same is wanting in this case. Therefore, the best piece of evidence available on record on the point of negligence is the inquiry report and the first information report lodged by the driver on 9-8-1995. In the F.I.R. itself, the driver had written that the jeep dashed against a parked bus. The jeep driver was admittedly driving the jeep. It was for him to have been careful and cautious if it was raining at the time of accident and there were no wipers in the front screen. It is not the case of the driver that the parked bus on wrong side of the road. Therefore, it is established that the driver of the jeep was not vigilant in driving the jeep. The plea taken by the driver that the accident had taken place due to slippery road is not acceptable and the same is an improvement. Neither the driver nor the department had made any effort to get the site plan of the place of accident obtained, which could have disclosed the correct position. In any view of the matter, had the driver of the jeep been careful and cautious in driving the vehicle, the accident in question could have been avoided. The driver who had lodged the F.I.R. and the Officer concerned both had not cared to know the fate of the F.I.R., though a letter was written by the Officer concerned to the S.O. Haldwani as late as 16-9-1995. The suppression of police investigation report in this case casts a doubt that it would not have been favorable to the driver of the jeep. We accordingly hold that the motor accident in question had taken place in the night of 8-8-1995 due to sole negligence on the part of the driver Kishan Lal in the course of his employment. A similar matter came up for consideration before the Apex Court in the case of ***State of Maharashtra and others Vs. Kanchanmala Vijaysing Shirke and others [1996(1)T.A.C. 1 (S.C.)].*** The Apex Court while dealing on the relevant point has observed that ***"Vicarious liability of State for payment of compensation to the heirs of deceased of***

motor accidents due to negligence of its employee- Test to determine the act "in the course of employment" – Authorised act being done in an unauthorised manner- Offending Government Jeep driven by a clerk under the authority of its driver on duty at the time of accident-Dispute revolving around the mode or manner of execution of authority of the master by the servant-Vehicle used for the business of the State and for official purpose- Accident took place due to negligent driving of clerk under the influence of liquor- Whether the State is liable for compensation where the authorised act was performed in an unauthorised manner within the course of employment-Yes." In view of the Apex Court verdict, there is nothing to doubt that in the case at hand, the State is liable to make payment of compensation for the negligent act of its driver in the course of his employment. Since we have held above that the accident took place due to rash and negligent driving by the driver of the jeep in the course of his employment, therefore, the owner of the Jeep, i.e. State is also liable for payment of compensation. We are further fortified in our view by the Apex Court judgment in the case of ***Sohan Lal Passi Vs. P.Sesh Reddy and others [(1996) 5 Supreme Court Cases, 21]*** wherein it has been held that "*Motor vehicles Act 1939-Ss. 110-B, 92-A & 92-B- Liability of owner of the vehicle for motor accident occurring owing to negligent acts of his employees during the course of employment-Test-Act authorised by the owner performed by his employees in an unauthorised manner in the course of employment-Appellant owner of a bus authorizing his driver to drive the bus to carry passengers but driver allowing cleaner/conductor of the bus, also an employee of the appellant, to drive it when accident taking place with scooter which resulting in death of the scooterist-Held, appellant liable to pay compensation to LRs of the victim since the bus was nevertheless being driven for the business for the appellant and not for personal pursuit of the employee-Also established that the negligent act was in the course of employment*". The Apex Court has further held that " The crucial test is whether the initial act of he employee was expressly authorised and lawful. Then the employer shall nevertheless be

responsible for the manner in which the employees that is, the driver and the cleaner/conductor executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had actually authorised the particular manner in which the act was done. In the present case, the accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected within the course of employment. It was not an independent act for a purpose which had no nexus or connection with the bushiness of the appellant so as to absolve the appellant from the liability. The appellant had authorised the driver to drive the vehicle but the driver allowed the cleaner/ conductor who was also the employee of the appellant to drive the vehicle because of which the accident took place. It is not the stand of the appellant that the cleaner/ conductor was driving the vehicle without the knowledge or consent of the driver, for his personal pursuit. He was driving the bus for the business of the appellant, that is to carry the passengers. **In this background, the appellant cannot escape the liability so far the third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. As it has been established that the negligent act of the driver and the cleaner/conductor was "in the course of employment", the appellant shall be liable for the same.**

We therefore hold that the owner of the Jeep i.e. State is liable to make payment of compensation in the present case. Issue Nos. 1 and 2 are answered accordingly. The findings of Issue Nos. 1 and 2 recorded by the learned Tribunal are set aside. The appeal preferred by the driver Kishan Lal is liable to be allowed partly.

Now, the only question to be answered in this appeal is as to what should be the just compensation. The claimants have mentioned that the income of the deceased was Rs. 2,705/- per month. The O.P. Nos. 1 and 2 have admitted this fact, therefore, it may taken that the gross income of the deceased was Rs. 2,700/-. Out of this amount a sum of Rs.600/- can be deducted towards compulsory deposits towards General Provident Fund and Group Insurance Scheme etc. The remaining amount comes to Rs. 2,700-500 = Rs. 2100/- per month. Out of this amount one third can be deducted towards the personal expenses of the deceased. Thus, it can be assessed that the deceased was contributing Rs. 1400/- per month to his family, thereby the annual loss of dependency comes to 1400 x 12 = 16800/-. The age of the deceased has been disputed by the employer and in the written statement it was stated to be 40 years. According to claimants the deceased was 35 years of age at the time of accident. Therefore the deceased falls in the age-group of 35-40 years. It is now settled law that the Second Schedule of Section 163-A of the Act is only a guide line and the compensation has to be assessed on some guess work. Admittedly, the widow of the deceased has already been given employment in the department under the Dying in Harness Rules. Besides, she has already received amount of group insurance scheme and G.P.F. link insurance amount on account of death of her husband. Taking into consideration all the aspects of the case, we are of the view that multiplier of 12 will be the most suitable multiplier to meet the ends of justice in this case. Thus by applying the multiplier of 12 the compensation comes to 16,800 x 12 = Rs. 2,01,600/-, which may be rounded to Rs 2,00,000/-. This amount of compensation shall be just and proper. The compensation shall be payable by the State, the owner of the jeep in question.

So far as the interest is concerned, taking into consideration the decline in the present bank rate of interest, the claimants shall be entitled to simple interest @ 6% per annum from the date of claim petition, i.e. 14-12-1995 till the date for payment.

Issue No.5 is answered accordingly. The findings of the learned Tribunal on Issue No. 5 stands modified to the above extent.

It is pertinent to note that the mother of the deceased Smt. Bhawani Devi has already died and the claimants are the only legal heirs of the deceased Pushakar Singh, therefore, the compensation shall be shared by the three claimant-appellants in equal shares, Learned counsel for the claimant-appellants submitted that now the minor claimants have attained majority.

In the result, the A.O. No. 103 of 2001, preferred by the claimants is also liable to be partly allowed.

Both the appeals preferred by the claimants and the driver of the jeep in question are partly allowed. The claimants-appellants in A.O. No. 103 of 2001 shall get compensation of Rs. 2,00,000/- (two lacs) along with simple interest @ 6% per annum from 14-12-1995 till the date of payment. The compensation along with interest @ 6% p.a. shall be payable by the owner of the government jeep- The State-respondents. The impugned award, under appeal, stands modified accordingly.

The amount in deposit with this Court, if any, shall be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants

(B.S.Verma, J.) **(P.C. Verma, J.)**

RCP *s*